

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE MANUEL FERNANDES,
Petitioner,

v.

ANDREA CABRAL, SHERRIFF
SUFFOLK COUNTY and
BRUCE CHADBOURNE, DISTRICT
DIRECTOR, IMMIGRATION AND
CUSTOMS ENFORCEMENT,
Respondents.

CIVIL ACTION NO:
Docket # 04-10223-MLW

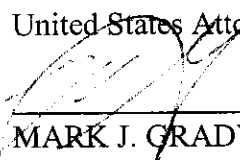
**RESPONDENTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED AND OPPOSITION TO THE PETITIONER'S
REQUEST FOR STAY**

Pursuant to Fed. R. Civ. P. 12(b)(6), the Respondents hereby move for dismissal of the above captioned action for failure to state a claim upon which relief may be granted. In support of the motion, the Respondents submit the attached memorandum of law and exhibits.

Wherefore, the Respondents request that the instant action be dismissed for failure to state a claim upon which relief may be granted and that the Petitioner's request for a stay of deportation be denied.

By their attorneys,

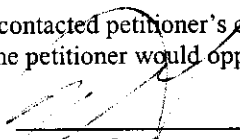
MICHAEL J. SULLIVAN
United States Attorney



MARK J. GRADY
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Certificate of Compliance with LR 7.1

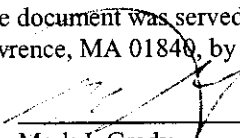
I hereby certify that on February 9, 2004, I contacted petitioner's counsel regarding the filing of this motion. Attorney Reid of that office indicated that the petitioner would oppose the motion.



Mark J. Grady
Assistant U.S. Attorney

Certificate of Service

I hereby certify that a true copy of the above document was served upon counsel for the Petitioner, Steven Lagana, Lagana & Associates, 145 Essex Street, Lawrence, MA 01840, by mail on this 9th day of February 2004.



Mark J. Grady
Assistant U.S. Attorney